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DECISION



Clinton
Jan
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-205943

DATE: January 12, 1982

MATTER OF: Moore's Cafeteria Services, Inc.

DIGEST:

1. Contracting agency properly rejected bid delivered late by commercial carrier, since bidder assumes risk of late delivery unless bid is sent by registered or certified mail as specified in regulations.
2. A bid sent by commercial carrier is considered to be hand-carried, and if it is late, the bid can only be considered if it is shown that the paramount cause of the late receipt is due to improper Government action.

Moore's Cafeteria Services, Inc. protests rejection of its bid for food services at Norton Air Force Base, California, on grounds that delivery after bid opening was due to negligence of a commercial carrier. We deny the protest.

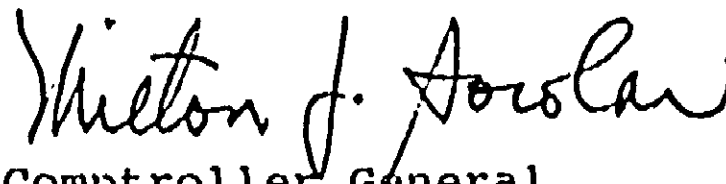
Moore states that it sent a bid on November 25, 1981 for a November 30 opening, using a recognized overnight express carrier because of concern that the November 26 Thanksgiving holiday would prevent timely delivery by the U.S. Postal Service. According to Moore, the carrier acknowledges that it held the document in Los Angeles while assuring the sender that it would be delivered on November 27, 1981. Moore argues that this was a prudent bid, developed in good faith and in compliance with delivery time regulations, and that it should be treated as an "acceptable late bid," so that Moore is not penalized for the action (or inaction) of the carrier.

We find that the contracting officer properly rejected Moore's bid, even though its late arrival was caused by the carrier. As we frequently have

stated, bidders ultimately are responsible for timely arrival of their bids. The only circumstances under which the Defense Acquisition Regulation (DAR) permits late bids to be considered is if they are sent by registered or certified mail not later than the fifth calendar day before bid opening, or if a mailed or telegraphed bid is received late due solely to mishandling after its receipt at a Government installation. See DAR §§ 2-303, 7-2002.2 (1976 ed.).

A bid sent by a commercial carrier is considered to be hand-carried, and if it is late, it can only be considered if it can be shown that the paramount cause of the late receipt is due to some improper Government action. See Decision Planning Corporation, B-202536, July 8, 1981, 81-2 CPD 20. Clearly, the tardy delivery in this case cannot be attributed to any action by the Government.

The protest is summarily denied.

for 
Comptroller General
of the United States